CHAPTER 2: EARLY RESTORATION PROCESS AND STATUS

This chapter summarizes the Trustees' Early Restoration project selection process, including a discussion of Early Restoration projects previously selected and approved in the Phase I Early Restoration Plan/Environmental Assessment and the Phase II Final Early Restoration Plan/Environmental Review.

The Trustees' Early Restoration project selection process initially results in a set of potential projects that, consistent with the Framework Agreement, are submitted to BP for review and discussion. The Framework Agreement requires the Trustees and BP to agree on: (1) the funding amount for a proposed project; and (2) Offsets. If the Trustees and BP reach agreement in principle on project terms, those projects are incorporated into a Draft Early Restoration Plan and subject to NEPA review. Projects can be considered ready for implementation only after consideration of comments submitted during the public review process, finalization of the Early Restoration plan, and completion of NEPA review.

2.1 Early Restoration Project Selection Process

The Trustees developed the Early Restoration selection process to be responsive to the purpose and need for conducting Early Restoration. Figure 2-1 depicts the general Early Restoration project selection process. In summary, Early Restoration project selection is a step-wise process comprised of: (1) project solicitation; (2) project screening; (3) negotiation with BP; and (4) evaluation and environmental review of proposed projects under OPA and NEPA, including public review and comment. These steps are described in more detail below, along with the Early Restoration evaluation criteria used by the Trustees as part of this process.

2.1.1 Early Restoration Project Solicitation and Public Participation

Public input is an integral part of NEPA, OPA and the Spill restoration planning effort; it is an important means for ensuring that the Trustees consider relevant information and concerns of the public. Following the Spill, the Trustees established websites to provide the public information about injury and restoration processes.[1] A Notice of Intent to Conduct Restoration Planning for the *Deepwater Horizon* Oil Spill (NOI) was published in the Federal Register on October 1, 2010 and announced publicly by the Trustees (Discharge of Oil from Deepwater Horizon/Macondo Well, Gulf of Mexico; Intent to Conduct Restoration Planning, 75 Fed. Reg. 60,800 (October 1, 2010)). Pursuant to 15 C.F.R. § 990.44, the NOI

[1] The Trustees established the following websites:

- NOAA, Gulf Spill Restoration, available at http://www.gulfspillrestoration.noaa.gov/;
- DOI, Deepwater Horizon Oil Spill Response, available at http://www.fws.gov/home/dhoilspill/;
- Texas Parks and Wildlife Department, Deepwater Horizon Oil Spill, available at http://www.tpwd.state.tx.us/landwater/water/environconcerns/damage_assessment/deep_water_horizon.phtml/;
- Louisiana, Deepwater Horizon Oil Spill Natural Resource Damage Assessment, available at http://losco-dwh.com/;
- Mississippi Department of Environmental Quality, Natural Resource Damage Assessment, available at http://www.restore.ms/;
- Alabama Department of Conservation and Natural Resources, NRDA Projects, available at http://www.outdooralabama.com/nrdaprojects/; and
- Florida Department of Environmental Protection, Deepwater Horizon Oil Spill Response and Restoration, available at http://www.dep.state.fl.us/deepwaterhorizon/default.htm

announced that the Trustees determined to proceed with restoration planning to fully evaluate, assess, quantify, and develop plans for restoring, replacing, or acquiring the equivalent of natural resources injured and losses resulting from the Spill. Public solicitation of restoration projects has been ongoing since publication of the NOI.

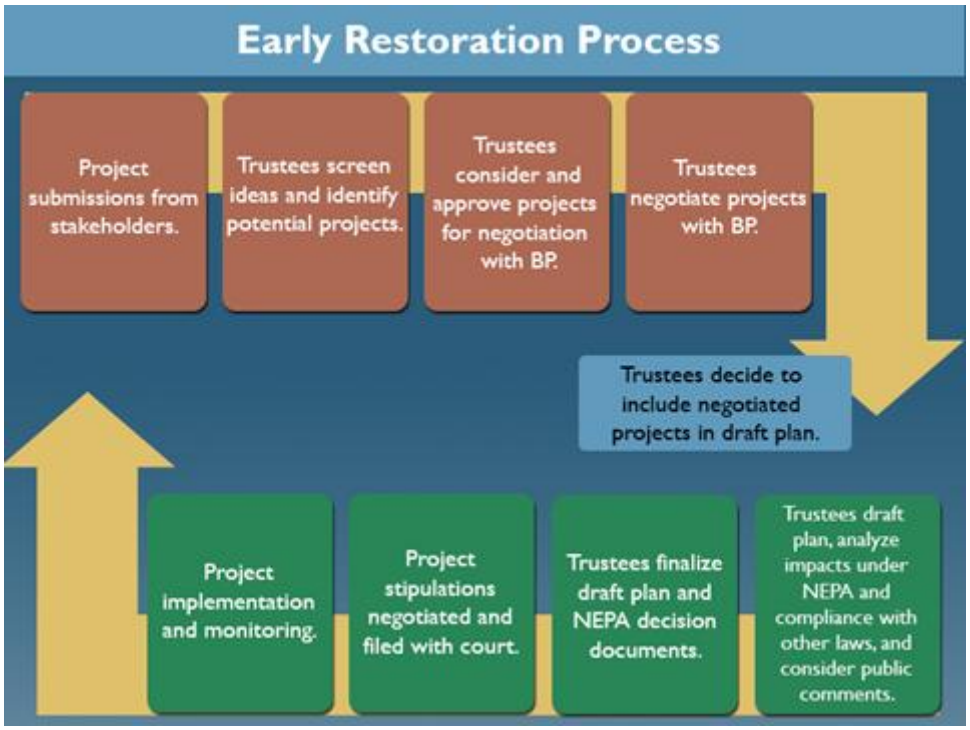

Figure 2-1. General Early Restoration project selection process.

Following adoption of the Framework Agreement in April 2011, the Trustees invited the public to provide restoration project ideas through a variety of mechanisms, including internet-accessible databases. The Trustees received hundreds of proposals, all of which can be viewed at several web pages.[2] In addition, ideas and comments were compiled from public meetings that focused on DARP restoration planning and supporting PEIS (spring 2011 scoping meetings) and Early Restoration (summer 2011). An additional series of public meetings was held following the release of the Phase I DERP/EA (early 2012), and one public meeting was held following the release of the Phase II DERP/ER (fall 2012). A complete record of the public meetings and opportunities to provide input and comments is available at http://www.gulfspillrestoration.noaa.gov.

The Trustees are mindful of other Gulf restoration reports, research, management plans and related efforts. These include those by the Gulf Coast Ecosystem Restoration Task Force (GCERTF 2011), Mabus

[2] See, www.gulfspillrestoration.noaa.gov; http://losco-dwh.com; http://www.restore.ms/; http://www.tpwd.state.tx.us/landwater/water/environconcerns/damage_assessment/deep_water_horizon.phtml http://www.outdooralabama.com/nrdaprojects/, www.deepwaterhorizonflorida.com, http://www.gulfspillrestoration.noaa.gov/restoration/give-us-your-ideas/.

(2010), (Brown et al. 2011), (NRCS 2011), (Peterson *et al*. 2011) Gulf Coast Ecosystem Restoration Council's Comprehensive Plan (GCERC 2013), and others as well as general coastal restoration planning efforts being undertaken by individual Trustees, such as Louisiana's Comprehensive Master Plan for a Sustainable Coast (CPRA 2012) and Annual Plan updates and the Mississippi Coastal Improvements Plan (USACE 2008).

The Trustees continue to address the ongoing NRDA for the Spill, the restoration planning process and potential restoration projects at public meetings, venues and meetings with many governmental and non-governmental organizations and other stakeholders. The Trustees continue to solicit restoration ideas via the web and continue to consider existing and new project proposals as part of the restoration planning process.

2.1.2 Early Restoration Evaluation

2.1.2.1 Evaluation Criteria

In evaluating potential Early Restoration actions, the Trustees considered the following suite of criteria per NRDA regulations at 15 C.F.R §990.53(a) (2):

- Whether each alternative is comprised of primary and/or compensatory restoration components that address one or more specific injury(ies) associated with the incident;
- Whether each alternative is designed so that, as a package of one or more actions, the alternative would make the environment and public whole;[3]
- Whether each alternative is technically feasible; and
- Whether each alternative is in accordance with applicable laws, regulations, or permits.

The NRDA regulations (15 C.F.R. § 990.54) provide criteria to be used by Trustees to evaluate projects designed to compensate the public for injuries caused by oil spills. To meet the NRDA regulations, the Trustees must evaluate proposed restoration alternatives based on, at a minimum:

- The cost to carry out the alternative;
- The extent to which each alternative is expected to meet the Trustees' goals and objectives in returning the injured natural resources and services to baseline and/or compensating for interim losses.[4]
- The likelihood of success of each alternative;
- The extent to which each alternative will prevent future injury as a result of the incident, and avoid collateral injury as a result of implementing the alternative;
- The extent to which each alternative benefits more than one natural resource and/or service; and

[3] The Trustees consider this criterion with the understanding that early restoration, by itself, will not make the environment and the public whole. For early restoration purposes, the Trustees consider whether each alternative will *contribute to* making the environment and public whole.

[4] In other words, the ability of the restoration project to provide comparable resources and services, that is, the nexus between the project and the injury, is an important consideration in the project selection process.

- The effect of each alternative on public health and safety.

Under NRDA regulations (15 C.F.R. § 990.54(b)), if the Trustees conclude that two or more alternatives are equally preferable, the most cost-effective alternative must be chosen.

The Framework Agreement states in paragraph 6 that the Trustees shall select projects for Early Restoration that meet the following criteria:

- Contribute to making the environment and the public whole by restoring, rehabilitating, replacing, or acquiring the equivalent of natural resources or services injured as a result of the Spill, or compensating for interim losses resulting from the incident;
- Address one or more specific injuries to natural resources or services associated with the incident;
- Seek to restore natural resources, habitats, or natural resource services of the same type, quality, and of comparable ecological and/or recreational use value to compensate for identified resource and service losses resulting from the incident;
- Are not inconsistent with the anticipated, long-term restoration needs and anticipated final DARP restoration plan; and
- Are feasible and cost-effective.

2.1.2.2 Early Restoration Project Screening

The project screening process was developed by the Trustees to be responsive to the purpose and need for conducting Early Restoration. The Trustees acted promptly to identify project proposals that met the above criteria as well as several practical considerations that, while not legally mandated, are nonetheless useful and permissible to help screen the large number of potential qualifying projects. None of these practical considerations are used as the sole basis for a decision; rather they are used as flexible, discretionary factors to supplement the suite of criteria described above. For example, Trustees:

- take into account how quickly a given project is likely to begin producing environmental benefits;
- seek a diverse set of projects providing benefits to a broad array of potentially injured resources;
- focus on types of projects with which they have significant experience, allowing them to predict costs and likely success with a relatively high degree of confidence and making it easier to reach agreement with BP on the Offsets attributed to each project, as required by the Framework Agreement; and
- give preference to projects that are closer to being ready to implement.

All of these discretionary factors are consistent with a key objective for pursuing Early Restoration: to secure tangible restoration of natural resources and natural resource services for the public's benefit while the longer-term process of fully assessing injury and damages is still underway.

In addition, NRDA regulations (15 C.F.R. § 990.56) contemplate the use of existing restoration projects and regional restoration plans to address natural resource injuries where such a plan or project is determined to be the preferred alternative among a range of feasible restoration alternatives for an incident. Projects already developed under such plans, with completed engineering designs, cost analyses, partner coordination, and permit and NEPA requirements satisfied, could be implemented quickly, and are good candidates for consideration in the Early Restoration process.

The Trustees evaluated proposals for Phase III of Early Restoration relative to the purpose and need for projects, potential impacts to the environment, evaluation criteria and the discretionary factors identified above. Included in these proposals, the Trustees identified a number of previously developed projects as appropriate for Early Restoration, and Chapters 8-12 identify the projects that are drawn from regional restoration plans or existing restoration projects. Additional information about the process that individual State Trustees used to screen potential projects is also described in Chapters 8-12.

In addition to the state screening processes, NOAA and DOI also consider the restoration evaluation criteria to identify potential projects, with particular focus as described below:

- DOI identified projects that would take place both on and off DOI-managed lands. DOI has significant experience implementing restoration projects on lands managed by DOI, which allows DOI to predict costs and project success with a relatively high degree of confidence. Additionally, the Spill injured natural resources and related services on several of the National Wildlife Refuges and National Parks. Consequently, DOI prioritized some restoration projects that would be implemented on these National Wildlife Refuges and National Parks. For projects that would not take place on DOI lands, DOI has sought to partner with other trustees to propose and implement Early Restoration projects that address injuries and comply with project evaluation criteria. As described in more detail in chapters 9 and 12, DOI will serve as a lead or co-lead implementing trustee for 3 of the projects proposed in the Draft Phase III ERP/PEIS (Louisiana Outer Coast Restoration (North Breton restoration location), Beach Enhancement Project at Gulf Islands National Seashore, and Gulf Islands National Seashore Ferry Project).
- NOAA's project screening process included the application of the restoration evaluation criteria, as well as identification of projects that would restore for injuries specifically to NOAA trust resources. Further, NOAA prioritized projects that would have benefits to both nearshore and offshore trust resources. NOAA sought to partner with other trustees to propose and implement Early Restoration projects that address injuries to NOAA trust resources, and comply with the project evaluation criteria. As described in more detail in chapters 9-12, NOAA will serve as a lead or co-lead implementing trustee for 4 of the projects proposed in the Draft Phase III ERP/PEIS (Louisiana Outer Coast Restoration (Chenier-Ronquille restoration location), Mississippi Hancock County Marsh Living Shoreline Project, Alabama Swift Tract Living Shoreline, and Florida Pensacola Bay Living Shoreline Project).

Individual Trustees identified preliminary lists of projects that were then brought to all of the Trustees for collective consideration and approval to proceed with project negotiations with BP.

2.1.2.3 Early Restoration Project Negotiation with BP

As per the NRDA regulations at 15 C.F.R. Part 990 Trustees are to invite responsible parties to participate in the NRDA process. However, the authority and responsibility to assess natural resource injuries and losses and to define appropriate restoration plans rest solely with the Trustees. BP confirmed its interest in cooperatively participating in the NRDA process in 2010. The Framework Agreement outlines BP's willingness to support Early Restoration planning and implementation.

2.1.2.4 Early Restoration Project Public Review and Comment

OPA (33 U.S.C. § 2706 et seq.), NEPA (42 U.S.C. § 4321 et seq.) and the Framework Agreement require the Trustees to consider public comments on the restoration planning process associated with the Spill. For each phase of Early Restoration, the Trustees have developed draft restoration plans for public review and comment and have held public meetings prior to finalizing projects. For example, the Phase I DERP/EA and the Phase II DERP/ER served as proposed restoration plans for Early Restoration, environmental review of the projects under NEPA, and the means used by the Trustees to seek public review and comment during Phases I and II. Public meetings were held to facilitate the public review and comment. A complete record of the public meetings and input opportunities is available at http://www.gulfspillrestoration.noaa.gov. The Trustees considered comments on the Phase I and Phase II DERP/EA-ER prior to finalizing projects. Following publication of the Final Phase I ERP/EA and Final Phase II ERP/ER the Trustees finalized agreements with BP regarding funding and Offsets for the selected projects and proceeded with implementation, subject to any remaining actions needed to comply with applicable state and federal laws.

2.2 Ongoing Early Restoration Projects

A total of ten projects were included in the Final Phase I EPR/EA and Phase II ERP/ER, and the Trustees finalized agreements with BP regarding funding and Offsets for them. Table 2-1 and Table 2-2 below provide summary information for those projects (as described in the Final Phase I EPR/EA and Phase II ERP/ER). Status on implementation of these restoration projects can be found at: http://www.gulfspillrestoration.noaa.gov/2012/09/new-atlas-tracks-progress-of-early-restoration-projects/.

2.2.1 Phase I Projects

Phase I Early Restoration Projects include marsh restoration, oyster restoration, dune restoration, creation of artificial reefs, and construction or enhancement of boat ramps (see Table 2-1). The total estimated cost for these projects (including contingencies) is approximately $62 million.

Table 2-1. Phase I Early Restoration project summaries.

PROJECT TITLE	LOCATION (PARISH/ COUNTY AND STATE)	SELECTED RESTORATION	ESTIMATED COST (INCLUDING POTENTIAL CONTINGENCIES)[5]	RESOURCES BENEFITTED
Lake Hermitage Marsh Creation	Plaquemines Parish, Louisiana	Approximately 104 acres of marsh creation	$14,400,000	Brackish Marsh in the Barataria Hydrologic Basin
Louisiana Oyster Cultch Project	St. Bernard, Plaquemines, Lafourche, Jefferson, and Terrebonne Parishes, Louisiana	A minimum of approximately 850 acres of cultch placement on public oyster seed grounds; construction of improvements to an existing oyster hatchery	$15,582,600	Oysters in Coastal Louisiana
Mississippi Oyster Cultch Restoration	Hancock and Harrison Counties, Mississippi	1,430 acres of cultch restoration	$11,000,000	Oysters in Mississippi Sound
Mississippi Artificial Reef Habitat	Hancock, Harrison, and Jackson Counties, Mississippi	100 acres of nearshore artificial reef creation	$2,600,000	Nearshore Habitat in Mississippi Sound
Marsh Island (Portersville Bay) Marsh Creation	Mobile County, Alabama	Protecting 24 existing acres of salt marsh; creating 50 acres of salt marsh; 5,000 linear feet of tidal creeks	$11,280,000	Coastal Salt Marsh in Alabama
Alabama Dune Restoration Cooperative Project	Baldwin County, Alabama	55 acres of primary dune habitat creation	$1,480,000	Coastal Dune and Beach Mouse Habitat in Alabama
Florida Boat Ramp Enhancement and Construction Project	Escambia County, Florida	Construction of four boat ramp facilities	$5,067,255	Recreational Use in Escambia County, FL
Florida (Pensacola Beach) Dune Restoration	Escambia County, Florida	20 acres of coastal dune habitat creation	$644,487	Coastal Dune Habitat in Escambia County, FL

2.2.2 Phase II Projects

Phase II Early Restoration Projects include enhancement of avian breeding habitat and protective improvements to turtle nesting habitat (see Table 2-2). The total estimated cost for these projects (including contingencies) is approximately $9 million.

[5] Actual costs may differ depending on future contingencies, but will not exceed the amount shown without further agreement between the Trustees and BP.

Table 2-2. Phase II Early Restoration project summaries.

PROJECT TITLE	LOCATION	SELECTED RESTORATION	ESTIMATED COST (INCLUDING POTENTIAL CONTINGENCIES)[6]	RESOURCES BENEFITTED
Enhanced Management of Avian Breeding Habitat Injured by Response in the Florida Panhandle, Alabama, and Mississippi	Florida: Escambia, Santa Rosa, Okaloosa, Walton, Bay, Gulf, and Franklin counties. Alabama: Bon Secour National Wildlife Refuge (NWR) in Baldwin and Mobile counties. Mississippi: Gulf Islands National Seashore (GUIS) – Mississippi District.	Symbolic fencing, predator control, and stewardship around important nesting areas to prevent disturbance	$4,658,118	Nesting and foraging habitat for beach nesting birds in Florida, and on DOI lands in Alabama and Mississippi.
Improving Habitat Injured by Spill Response: Restoring the Night Sky	State-owned beaches within the boundaries of the Gulf State Park in Baldwin County, AL, and properties in Escambia, Santa Rosa, Okaloosa, Walton, Bay, Gulf, and Franklin counties, FL.	Reduce artificial lighting impacts on nesting habitat for loggerhead sea turtles	$4,321,165	Nesting habitat for loggerhead sea turtles in Florida and state lands in Alabama.

2.3 Proposed Phase III Early Restoration Projects

As noted above, the Trustees are proposing a set of Phase III Early Restoration projects totaling approximately $627 million in estimated projects' costs (including contingencies). These projects are being evaluated in this document to permit the Trustees to expeditiously implement any selected projects and to avoid the delay in implementing any selected projects that would be incurred by evaluating these projects under individual NRDA restoration plans and their supporting individual NEPA analyses. Ecological projects comprise $396.9 million (63%) of this total, and recreational projects comprise the remaining $230 million (37%). Within the ecological project category, barrier island restoration accounts for $318.4 million of estimated project costs, followed by restoration of living shorelines ($66.6 million), oysters ($8.6 million), Seagrasses ($2.7 million) and dune projects ($0.6 million). Overview information concerning all of the proposed projects is presented in Chapter 7. More detailed project information and environmental analyses for proposed Phase III Early Restoration projects are included in Chapters 8-12 of this document.

2.4 Potential Future Phases of Early Restoration Projects

Approximately $71 million in Phase I and Phase II Early Restoration projects were selected for implementation. Approximately $627 million in Phase III Early Restoration projects are proposed in this plan, and are consistent with the Trustees' proposed preferred programmatic alternative identified in Chapter 5 (i.e., Alternative 4: Contribute to Restoring Habitats, Living Coastal and Marine Resources, and

[6] Actual costs may differ depending on future contingencies, but will not exceed the amount shown without further agreement between the Trustees and BP.

Protecting and Enhancing Recreational Opportunities). Table 2-3 provides a breakdown of proposed Phase III Early Restoration project costs by general project categories.

Table 2-3. Summary of Phase III Early Restoration projects.

PROJECT CATEGORY	ESTIMATED COST FOR ALL PROPOSED PROJECTS IN THAT CATEGORY
Barrier Islands	$318,363,000
Recreational	$230,118,372
Living Shoreline	$66,603,668
Oyster	$8,610,081
Seagrasses	$2,691,867
Dune	$611,234
Total	**$626,998,302**

If all proposed Phase III Early Restoration projects are selected, there would be $303 million still available for later phases of Early Restoration. The selection of potential projects for future phases of Early Restoration will be guided by the proposed preferred programmatic alternative.

2.5 References

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